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CURRENT TOPICS

The Judicial Committee

WHEN BROUGHAM made his famous speech on law reform in the Commons, in 1828, the Privy Council had become a court with a vast and complex appellate jurisdiction extending over the whole of the British Empire. Then, as now, arguments on French, Roman, Dutch, Hindu, Mahomedan and other systems of law were heard by that body, but there was no guarantee that its members would have had any previous experience of those or, indeed, of any systems of law. Most privy councillors were politicians and not lawyers. It is to Brougham, as Lord Chancellor, that we owe the constitution of the Judicial Committee of the Privy Council as we know it to-day, with its varied composition of the highest experts in the laws of other component countries of the Commonwealth and of our own country. Subsequently, by an amending Act of 1895, the Queen was empowered to appoint as members of the Judicial Committee not more than five judges of the higher courts of India and the colonies (only two had previously been permitted). January 13th, 1947, marked another historic step when a committee, consisting entirely of English and Scottish judges, dismissed an appeal by the Attorney-General for Ontario by special leave from a majority judgment of the Supreme Court of Canada, dated 19th January, 1940, on a reference by the Governor-General in Council as to the competency of the Parliament of Canada to amend the Supreme Court Act so as to give the Supreme Court exclusive ultimate appellate civil and criminal jurisdiction within and for Canada. The opinion of the Board was read by the Lord Chancellor, and it was held that, in the light of the Statute of Westminster, 1931, it was within the power of the Dominion Parliament to enact that the jurisdiction of its Supreme Court should be ultimate. No other solution was consonant with the status of a self-governing Dominion. The result is, of course, that the Canadian Bill will be passed and there will soon be no further appeals from either the Supreme Court of Canada or the provincial courts of Canada to the Judicial Committee. Possibly the time will come when the Judicial Committee will completely cease to be the link of Empire that it has been in the past. This may be a matter for regret, but it must have been contemplated by those who framed the Statute of Westminster, who may have thought that, compared with the other bonds, this link was not indispensable, and as the Board has now put it, was in fact not consonant with the status of a self-governing Dominion.

Trust Funds

THE sharp contrast which has long been apparent between the law and the realities of authorised investments under the Trustee Act, 1925, has been emphasised anew by the impending nationalisation of transport. Professor G. W. KEETON, in an historical analysis and survey of the law of trustee investment, in the *Sunday Times* of 5th January, 1947, pointed to various alterations in the factual position in the twentieth century, such as the failure of the Irish Free State to give the necessary guarantees in 1922, resulting in their passing out of the field of trust investment, the steady fall in the yield on British securities, and now the compulsory exchange of railway stock for Government 2½ per cent. stock. "If it is suggested," wrote Professor Keeton, "that restriction of the range of investment and the reduction of interest rates, coupled with punitive taxation, is driving another nail in the coffin of the 'capitalist class,' this is very far from being the case." That class, he pointed out, have already transferred their money into industrial enterprise because it is their habit to give their trustees the powers of beneficial owners in regard to investments. The main sufferers, he wrote, are persons of small means, and educational institutions. Costs increase, and the income from endowments becomes less and less important, so that universities and public schools are rapidly being transformed from state-aided to state-owned institutions. Charitable and public enterprises, as well as religious organisations and trade unions, all face the same problem. The article concludes with the observation that no one can predict with certainty what the social consequences of this will be. Professor Keeton's analysis is keen and thought-provoking. If the causes which he names are worth preserving as institutions independent of the State, some means should be devised, possibly by a revision of the Trustee Act, to deal with the position. The disappointing answer of the Chancellor of the Exchequer on the subject in the Commons just before Christmas ought not to be taken as the last word in a situation of serious personal hardship and public loss which can hardly have been contemplated as a result of recent and impending legislative changes.

Arbitrations and Appeals

THE President of the Institute of Arbitrators, Sir LYNDEN MACASSEY, K.C., said, on 9th January, at a luncheon given by the Institute, that if England were to come into line with international commercial law there should be an alteration to make it possible for two parties to agree that an award should be final. That law applied throughout the British Dominions and most countries of the world, and an alteration in our system was of vital importance for our international commercial relations. MAITRE GOVARE, Advocate of the Court of Appeal, Paris, who was the guest of honour, said that an award by an *aimable compositeur* in France was final, and the international commercial world would never accept a system

which included the possibility of an appeal to the House of Lords with all its attendant delays. It is quite clear that any submission excluding the right of appeal by way of requiring the arbitrator to state a case (*Czarnikow* v. *Roth, Schmidt & Co.* [1922] 2 K.B. 478) would be void in this country as tending to oust the jurisdiction of the courts. Difficult questions arise as to whether it is altogether desirable to prevent a party to an arbitration from complaining to the courts of an arbitrator's collusion with the other party, to take only one example. A system of international commercial arbitration which would be common to the whole world was described in fuller detail by Sir Lynden Macassey in his address to the Institute on 29th October. The possibilities of doing something towards the attainment of this very practical ideal should be carefully considered.

Liabilities Adjustment and War Damage

IN the "Current Topics" of 21st December, 1946 (90 SOL. J. 619), we referred to the Chancellor's statement in the Commons as to value payments being made this year and as to mortgage interest and rent for new properties being taken into account in deciding what increase, if any, should be recommended under s. 11 of the War Damage Act, 1943. A London liabilities adjustment officer in a busy area has written referring to our comments and to the possibilities of relief being obtained through the Liabilities (War-Time Adjustment) Acts, 1941 and 1944. In many cases, he wrote, mortgage interest has been reduced even to zero, or it may be postponed, or both reduced and postponed. The cases depended upon their individual circumstances, but in every one in which he had been concerned some relief was obtained. While we are willing to concede this point, which coincides with the experience of most practitioners, there is a sense in which it is hardly relevant to the question of the extent to which the War Damage Commission would be entitled to take into account mortgage interest in assessing the increase to be made in value payments. Even assuming that a liability for mortgage interest has already been reduced to zero, the loss is not disposed of in that way; it is merely transferred to the shoulders of the mortgagee, whose rights to compensation deserve to be considered, especially when, as in cases within our experience, the whole of a widow's income is thus lost. It would therefore be of no interest to the War Damage Commission whether mortgage interest reductions had been made. The object of the Liabilities (War-Time Adjustment) Acts, 1941 and 1944, was to preserve businesses from being utterly destroyed by the effects of war, wherever that could be done by making private arrangements with creditors through liabilities adjustment officers, or by order of the court where necessary. Nowhere either in those Acts or in the War Damage Act, 1943, is there a hint or suggestion that creditors' interests are to be ignored. On the contrary, creditors' interests are expressly protected. It is in any case late in the day to commence advising clients to go to the liabilities adjustment officer.

Crime in Eire

THE report of the Commissioner of the Garda Siochana on Crime for the year 1945, which has just been published, provides interesting reading for the English reader, on account of the similarity of the problem of the continued increase in crime resulting from the war in Eire and in this country, in spite of Eire's neutrality. The number of indictable offences reported in the year 1945 was 16,786, an increase of 923 on the number for the year 1944 and more than double the figure for 1939. The number of juvenile offenders dealt with for indictable offences in the year 1945 was 2,833, an increase of 33 on the number dealt with in the year 1944. In each of these years, the number of such offenders formed 29 per cent. of the persons charged. The number of prosecutions for non-indictable offences in the year 1945 was 150,862, an increase of 22,876 on the number in the year 1944. This increase is accounted for principally under (1) The Road Traffic Act, 1933, with a total of 78,854 prosecutions, an increase of 14,375 on the number for the year 1944; (2) offences in relation to licensing of dogs, with a total of 14,398 prosecutions, an increase of 2,829, and (3) other road offences, in which there was an increase of 1,660. There was an increase of 333 in assaults. The number of persons convicted of indictable offences in 1945 was 4,103, of whom 3,483 were males and 620 females. The number convicted by courts of summary jurisdiction was 3,493—2,969 males and 524 females—and the number convicted by circuit and higher courts was 610—514 males and 96 females. While it affords us some measure of consolation to know that other countries are faced with similar problems to our own, it would be instructive to know more about how they are dealing with them. From the report it appears that use is being made of the Probation of Offenders Act. It would be interesting to have some authoritative Irish view of their experience of the value of this Act.

Recent Decisions

In *Jordan* v. *May and Another*, on 14th January (*The Times*, 15th January), the Court of Appeal (MORTON, BUCKNILL and ASQUITH, L.JJ.) held that there was evidence on which the county court judge could fairly hold that batteries of a generating plant, on a table near the engine of the plant and connected to it by wires, the engine being bolted on to a concrete bed, were not fixtures and therefore not part of the land and were accordingly not within the provision in s. 1 (1) of the Landlord and Tenant (Requisitioned Land) Act, 1944, which prevents the enforcement of a repairing covenant in respect of damage to requisitioned land occurring during the period while possession is retained under the requisition. The judgment of the learned county court judge was upheld.

In *Watson* v. *Saunders Roe, Ltd.*, on 16th January (*The Times*, 17th January), the Court of Appeal (MORTON, BUCKNILL and ASQUITH, L.JJ.) held that where a tenant under a lease had illegally sub-let in contravention of a term in his lease and the landlord had accepted rent from the tenant after becoming aware of the illegal sub-letting, and the tenant subsequently gave the landlord notice of his intention to quit the premises, the effect of the notice was to determine the interest of the tenant; the sub-tenant, who had received notice to quit from the tenant, became tenant of the head landlord, and the landlord could not claim rent or use and occupation against the head tenant in respect of any period after the expiry of the head tenant's notice of intention to quit. The court held that at the material time, just before the expiry of the notice to quit, the premises were lawfully sub-let (see *Norman* v. *Simpson* [1946] 1 K.B. 158, and *Reynolds* v. *Bannerman* [1922] 1 K.B. 719).

In a case in the Court of Criminal Appeal, on 14th January (*The Times*, 15th January), the court (the LORD CHIEF JUSTICE and HUMPHREYS and LEWIS, JJ.) held that offences against the Road Traffic Act, 1930, which might involve disqualification for holding a driving licence or the endorsement of a licence were not proper cases to be taken into consideration when sentencing a prisoner for another type of offence.

In *Clarke and Wife* v. *Brims*, on 17th January (*The Times*, 18th January), MORRIS, J., held that s. 1 (1) of the Road Transport Lighting Act, 1927, which imposed a duty on any person causing or permitting a vehicle to be on any road during the hours of darkness to provide the vehicle with lamps in accordance with the provisions of the Act, imposed a public duty only, to be enforced by the penalty imposed for breach of it, and not such a duty as would give rise to an action for damages for breach of statutory duty at the suit of a party aggrieved. His lordship further held that as the defendant's stationary car was exhibiting a rear light shortly before the accident and the defendant had a reasonable though incorrect belief that his lamp was alight at the time of the accident, he was not guilty of negligence at common law (*Maitland* v. *Raisbeck* [1944] K.B. 689).

TOWN AND COUNTRY PLANNING BILL

THE fact that this Bill is still in its earliest stages does not diminish the necessity for a close acquaintance with its provisions, for it should already be exerting a great influence on dealings in land and property. The purpose of this article is to try and draw attention to salient features which may affect the actions of owners and prospective purchasers before the Bill becomes law.

Most readers will already be familiar with the outline of the Bill from the daily press. The vesting of the freehold is not affected, but cl. 10 prevents an owner from carrying out without permission any development (which means the carrying out of building, engineering, mining or other operations in, on, over, or under land and the making of any material change in the use of any buildings or other land) on his land after a day to be appointed by the Minister.

It will be seen that this main principle of the Bill affects only persons who are holding land with a view to development, and, therefore, subject to what is said hereafter about compulsory purchase, the Bill seems unlikely to affect the vast majority of land owners, particularly house owners and the greater number of agricultural land owners (out of 60,000,000 acres in the United Kingdom some 48,000,000 acres are devoted to agriculture). Those affected will be mostly the owners of undeveloped land in or near expanding centres of population and owners of developed property suitable for redevelopment to a more intensive use, e.g., from residential to business premises. In particular the Bill does not, subject to the compulsory purchase compensation ceiling mentioned later, deprive owners, other than those seeking development permission, of any general rise in property values nor of any rise due to outside influences, e.g., new gas or electricity services or the construction of a new railway in the neighbourhood. From such owners no betterment charge is extracted by the Bill.

As compensation for the expropriation of the development rights a sum of £300,000,000 is allocated for the whole of England, Wales and Scotland. No formula for its division is given in the Bill, which provides (cl. 51) that the sum shall be apportioned between England and Wales on the one hand and Scotland on the other as the Treasury may determine, and that in England and Wales, as soon as the development values of interests in land in respect of which claims are made as provided for in the Bill have been ascertained, the Treasury shall make a scheme for the distribution of the sum apportioned to England and Wales.

Any person wishing to develop must, in addition to obtaining the necessary planning permission, apply to the Central Land Board to determine and certify what development charge is to be paid in respect of the development, and the amount of this charge must be paid or secured to the Board before the development takes place (cll. 62 and 64). No formula from which the amount of the charge can be calculated is specified. The Bill simply states that the Board must have regard to any increase in the value of the land which follows from the development (cl. 63) and, subject to this, it is left to the Treasury to prescribe the general principles to be followed by the Board.

Any person purchasing land now for development after the appointed day at present day values will, therefore, be entitled to claim a share of the £300,000,000, and on developing will have to pay a development charge. If full compensation for the depreciation were to be received the compensation and the development charge might balance; but it seems certain, unless the Bill is materially amended, that the compensation will not be anything like full, while the development charge may well represent the full development value for the development in view, with the result that the owner may be out of pocket over the whole transaction. It will, therefore, not be surprising if transactions in land are curtailed by the uncertainty introduced by the Bill. As a substantiation of this somewhat gloomy view of the compensation payable it may be mentioned that the Barlow Report working on 1937 figures gave as an "intelligent guess" the sum of £400,000,000 for the value in 1938 of the development rights in undeveloped land only. The legal position of the State appears to be that—

(*a*) the State may not requisition or take possession of land without paying compensation, but

(*b*) the common law recognises no right to compensation where the use which an owner may make of his land is regulated without dispossession,

and the Government, as stated in their explanatory memorandum on the Bill, take the view that owners who lose development value are not on that account entitled to compensation, but they recognise that if no payments were made hardship would be caused in many cases.

The effect of the expropriation of development values will be that property will change hands at about its permitted existing use value for the time being (i.e., the price will exclude any development value), as the purchaser in calculating the price he can afford to pay will take into account the charge which he will have to pay to the Central Land Board for any development. Conveyancing scale costs on land affected will, therefore, be considerably diminished as purchase prices, before payment of the charge, will be reduced by the development value, although it would seem equitable that a purchaser's solicitor at least should be able to charge on the purchase price plus the development value since this is the real price to his client. Difficulties would, however, inevitably ensue where there was a time lag between the purchase and the application for determination of the development charge.

An important set of clauses to those already owning land suitable for development, as well as to those contemplating purchase of such land, is contained in Pt. VI of the Bill. These clauses deal with development under operative planning schemes and interim development permissions granted under the existing law before the appointed day, but which has not then been completed or commenced. Summarised very briefly the position appears to be as follows:—

(1) Where an interim development permission has been granted after the 22nd July, 1943, so far as it has not been carried out at the appointed day it will be deemed to be a permission granted under the new Bill and, except in the cases mentioned in the next sub-paragraph, a development charge will have to be paid. The owner will be able to claim for depreciation caused by the Bill as if the original permission had not been continued under the Bill, i.e., he will be able to submit a claim for the development value of the development not carried out (cl. 72).

(2) Where works for the erection or alteration of a building in accordance with any operative planning scheme or interim development permission have been begun but not completed before the appointed day, planning permission under the Bill is deemed to be granted for the completion of the works and no development charge is payable. For the purpose of claiming any depreciation caused by the Bill the works are deemed to have been completed immediately before the appointed day (cl. 73).

Having regard to what is said earlier in this article, owners may consider it desirable to press on as far as possible with development and bring themselves under cl. 73 rather than cl. 72.

(3) In other cases where it would be permissible to carry out development under the existing law, i.e., under an interim development permission granted before 22nd July, 1943, or in accordance with an operative planning scheme, a fresh application will have to be submitted under the new law and the matter determined *de novo*. Where, however, in such a case the buildings or works concerned have been begun or contracted for before the appointed day, and the fresh application is made within six months of such day and is refused by the Minister or granted subject to conditions, the local planning authority must pay to the applicant compensation for expenditure rendered abortive or reasonably incurred through the abandonment of the contract (cl. 74). This is in addition to the usual compensation for depreciation.

Before leaving this Part of the Bill a further special case may be mentioned, namely, that of land ripe for development on the appointed day. In the case of such land, where development is permitted on application under the Bill or is deemed to be permitted by the Bill, the Minister may direct that no payment of compensation shall be made for depreciation and no development charge shall be payable for the development. Land is ripe for development when its development value is wholly or mainly attributable on the appointed day to the prospects of the development permitted and either—

(*a*) a building contract for that development, or

(*b*) a submission of plans for approval under local byelaws or other enactment

has been made within ten years before the 7th January, 1947 (cl. 75). It is, therefore, now too late to bring land within this special category if it is not already within it, and it is to be expected that there are large areas of land ripe for development in the popular sense which are not ripe within the meaning of the Bill. This special treatment of land ripe for development, which is the only extra consideration it receives, lends weight to the suggestion earlier in this article that compensation for depreciation will by no means equal the development charge payable in respect of the same land.

We now turn to what, in the writer's view, are far the most important provisions in the Bill so far as the majority of property owners are concerned, namely, the vastly extended powers of compulsory purchase which are granted. That they are extremely important to planners in search of positive planning or the power to carry their plans into effect cannot be doubted, but they are a great break with earlier ideas of the sanctity of private property. Part III of the Bill must be looked at for these powers, the short effect of which is that, in addition to the normal powers of Ministers, local authorities and statutory undertakers to acquire compulsorily land required for their statutory functions, the Minister may authorise a local authority or, in appropriate cases, the Central Land Board to acquire compulsorily any land which in the opinion of the Minister ought to be acquired for the purpose of securing its use in the manner proposed by any approved development plan of a local planning authority (cll. 36 (1), (3) and 41) or, in the period before such a plan is approved, any land the acquisition of which the Minister is satisfied is expedient for a purpose which appears to him to be immediately necessary in the interests of the proper planning of the area (cll. 36 (2) and 41). This is a very brief summary, but it is sufficient to show that there is very little security of tenure left when one takes into consideration the grandiose schemes which have been proposed by planners for various towns in the last year or two and which think little of interference with or demolition of existing property.

Furthermore, the Bill (cl. 47) applies the 1939 standard of values (which is the present basis of compensation) to all compulsory acquisition after its commencement, but in such a way that the 1939 development value is excluded. The property is to be regarded in its existing state at the date of the notice to treat (including its subjection to the provisions of the Bill), is then to be transported on a magic carpet back to 1939, and its value in that year estimated (cl. 47 (2)). For example, a local authority desires to acquire a site for a school playing field. The site forms part of some agricultural land (what would have been described by an agent as rough pasture ripe for development, though not in the new legal sense referred to above) on the edge of a large town. Instead of having to pay for the land at its building value as part of a housing estate, the authority will simply pay the 1939 agricultural value, the owner having, of course, claimed his share, such as it may be, of the £300,000,000 for the development value.

It will not, therefore, be surprising if local authorities in the immediate future are reluctant to proceed with the acquisition of land having a development value where they can conveniently defer such acquisition, more especially as they will probably not normally be entitled to claim for depreciation of land held by them on the appointed day (cl. 77 (2)).

The wide extension of the power of compulsory purchase, coupled with the 1939 standard of value, plus in the appropriate cases the usual supplement for owner-occupiers, should be carefully borne in mind by property purchasers, who may find themselves involved in a financial loss if they buy above this standard and subsequently have their property acquired compulsorily. It would be well for advisers of such purchasers to explain the position to them.

COMPANY LAW AND PRACTICE

COMPANIES BILL—VI

NOMINEE SHAREHOLDINGS

THE Cohen Committee expressed the view that the practice of nominee registration often serves a useful and legitimate purpose, and that registration of shares in the names of nominees should not be prohibited, but it recognised that on various grounds it may be desirable to secure that the beneficial ownership of shares should be disclosed and made certain recommendations to this end, which the Bill has in part adopted. The Committee expressed doubts as to the effectiveness and enforceability of provisions designed to ensure disclosure of beneficial ownership; and it is questionable whether anyone would consider that these doubts have been dispelled by the provisions on the subject contained in the Bill. In the debate in the House of Lords on the second reading of the Bill a learned Lord of Appeal challenged the Lord Chancellor to study the relevant clauses (with the aid of hot coffee and a wet towel) and then answer correctly a single question in an examination paper on the subject. The humbler student of the Bill would, I think, be most unwise to accept a similar challenge even if he were offered the additional, though doubtful, advantage of having the Bill before him when he takes the examination. I hope, therefore, that my readers may be prepared to ascribe any obscurities in the following summary to the inherently difficult nature of the subject matter; it would not be surprising if the Bill's provisions on this topic undergo considerable change, and too detailed a consideration of them at this stage may prove to have been not worth while.

Broadly speaking, what the Bill provides is for the disclosure of beneficial ownership not by the registered holder of the shares but by the beneficial owner. To start with, every company limited by shares is to keep a new register, known as the register of share ownership, in which are to be entered particulars of any person who is an "owner" but not the registered holder of the shares (cl. 57); a registered holder who is also the beneficial owner of the shares is accordingly not affected and will not appear in the new register. Shares comprised in share warrants to bearer are to be disregarded so far as this register is concerned. The new register is to be open to inspection in the same way as the register of members; and particulars of it are to be included in the annual return. There is an important and necessary provision that the company is not by reason of receiving any notification in relation to beneficial ownership to be affected with notice of, or put upon inquiry as to, the rights of any persons.

Obviously a company cannot keep such a register unless beneficial owners keep it informed of their interest in shares of which they are not the registered holders; accordingly, cl. 59 of the Bill requires notification to the company by the "owner" of shares if he is not registered in respect of them and they comprise or include at least a hundredth part (in nominal value) of the issued share capital or, where there are different classes of shares, of a class of shares. For the purpose of deciding whether the shares do constitute such a hundredth part, shares "owned" by a person in the capacity

of personal representative or trustee need not be aggregated with shares "owned" by him in another capacity. Once a person has notified his "ownership" then so long as he continues "owner" of any shares of which he is not the registered holder he remains bound to notify the company of any such shares, even though he may come to "own" less than a hundredth part of the issued share capital or of a class of shares; and this continuing liability to notify does apply to shares "owned" in the capacity of personal representative or trustee as well as to shares "owned" in some other capacity. It is expressly provided that a purchaser or transferee of shares need not before registration notify his "ownership" unless completion is unreasonably delayed or there is unreasonable delay in applying for registration of the transfer; and exemption from notification is conferred on certain trust companies "owning" shares as personal representative or trustee where the shares are registered in the name of a subsidiary of the trust company, and the name of the subsidiary incorporates the trustee company's name.

We have seen that bearer shares are to be disregarded by the company for the purposes of the new register of share ownership. Clause 59 (which I have just summarised) does not, however, contain any exception in regard to bearer shares, and as its provisions stand, it seems to me that the beneficial owner of shares comprised in a share warrant is bound to notify the company of his ownership if the shares amount to the specified minimum. If this is so, it cannot surely have been intended, as it would result in an obligation to notify to the company something which the company is to disregard.

We now come to the difficult provisions defining an "owner" of shares for the purposes of these provisions as to the registration of "share ownership"; I would remind my readers that these clauses of the Bill are only concerned with beneficial "owners" who are not also the registered holders of the shares. Clause 58 provides that an owner of a share is a person who has any present right of ownership over it, always provided it is not a right which some other person can require him to exercise in accordance with that other person's instructions; this proviso is not to apply, however, if that other person is not aware of the facts giving rise to his right to require the right of ownership to be exercised in accordance with his instructions.

The clause goes on to say what is meant by a right of ownership over a share for this purpose. It includes: (*a*) a right to dispose of the share, and a person has a right to dispose if he (i) has a right to require a transfer of the share to himself and would on exercising that right be an owner of the share, or (ii) has a right to dispose by appointment or otherwise of the whole interest in a share which is under a trust and vested in trustees or can be required by the trustees to be vested in themselves; (*b*) a right to vote in respect of the share; (*c*) a right to control the exercise by anyone else of a right to dispose of or vote in respect of the share. A person (X) is to be deemed to control the exercise by another of a right (i) if he can require it to be exercised in accordance with his instructions, whether the instructions are given immediately to the person having the right or to another person who controls the exercise of it, or (ii) if his consent or concurrence is necessary before the right is exercised, or (iii) if the person having the right (or a person who controls his exercise of it) is a body corporate not required by the Bill to keep a register of share ownership, and either its directors are accustomed to act in accordance with X's directions or X has or can control one-third of the votes at a general meeting of the body corporate.

A person's right of ownership is none the less a "present" right for the purposes of the clause, although it is conditional, provided that he has a present right to perform or secure the performance of the condition. Joint owners of a right are each to be deemed to have that right. Finally, for all the purposes of these provisions as to who is "owner," no regard is to be taken of (*a*) any rights, or limitations on rights, arising under a mortgage or revocable power of attorney, (*b*) any restriction imposed by the company's articles on the right to dispose of shares.

It is all rather bewildering, though the general effect of these complicated and comprehensive provisions as to "ownership" is reasonably clear; viz., they bring within the ambit of the Bill's provisions as to registration of beneficial ownership all those who are not registered in respect of the shares but, by virtue of a will, settlement, contract or otherwise, can direct either what is to be done with the shares or how the voting rights are to be exercised. Broadly speaking, the provisions as to the control of the exercise of a right result, or are designed to result, in this, that however many layers of nominees and trustees there may be between the registered holder and the real beneficial owner, the latter's "ownership" will come to light. As I have indicated, detailed analysis of the provisions, even were it within my competence, may well prove to have little relevance to the provisions in their final form; and it is perhaps not untrue to say that the more complex and elaborate the provisions are the greater the number of loopholes which may be discovered by those interested to evade disclosure of their interest in shares. I have already referred (in the fourth article of this series, *ante*, p. 20) to the powers which the Bill confers on the Board of Trade to investigate the membership of a company for the purpose of determining the real seat of control; and this power may prove in practice more effective than provisions as to registration of beneficial ownership which may well not be easy of enforcement.

Before leaving the subject of nominee shareholdings, I must mention briefly the other provisions of this part of the Bill. Under cl. 60, the register of share ownership is to deal with unissued shares which a person has a present right to require to be issued to him, unless the right is transferable by delivery of a letter of allotment; and correspondingly, a person having such a right is an "owner" and must notify ownership in appropriate cases, though this obligation only arises when the shares have been issued or six months have elapsed since the right to their issue was acquired. Clause 61 empowers the Board of Trade to make regulations on such matters as the times at which "owners" of shares are to notify the company of their ownership, and the sending by the company of notices to shareholders and others with reference to the obligations to notify beneficial ownership, and of notices to the Board of Trade if it appears that the provisions are not being complied with; and cl. 62, which prescribes the penalties, includes a penalty on a person voting either as holder of a share or as proxy when he knows that there has been default in notifying "ownership" to the company.

A CONVEYANCER'S DIARY

1946 CHANCERY—IV

I CONCLUDE this review of the year 1946 with a sketch of a number of cases, by no means all of them in the Chancery Division, which are of some interest to practitioners in Chancery matters. In *Langstone* v. *Hayes* [1946] K.B. 109, a separation deed provided that the husband should pay to the wife for her separate use and for the maintenance and support of herself an annuity payable weekly until terminated by the resumption of cohabitation or the unchastity of the wife. The husband died in 1944 and the widow sued his executor for arrears of the annuity under the deed, £14 of which had accrued due before the death of the husband, and £92 of which were alleged to have accrued thereafter. The executor paid the £14 into court with an admission of liability, but defended the action as to his liability for the payment of the annuity after the death of the husband. The county court judge gave judgment for the executor

and the widow appealed. Counsel for the widow sought, among other things, to rely on subs. (1) of s. 80 of the Law of Property Act, which provides that "a covenant . . . under seal made after the 31st day of December, 1881, binds the real estate as well as the personal estate of the person making the same if and so far as a contrary intention is not expressed in the covenant." His argument appears to have been that this subsection somehow affected the construction which was to be put upon covenants. This argument was not accepted by the Court of Appeal, who pointed out that the effect of that subsection is not to create a liability of the personal estate, but to extend a pre-existing liability of the personal estate to the real estate. That being so, the widow continued to be faced with the problem of persuading the court, as a pure matter of construction, to hold that this covenant extended beyond the lifetime of the husband. This onus she, perhaps not unnaturally, was unable to discharge. It has always been difficult to show that a covenant in a separation deed extends beyond the joint lives of the spouses in the absence of clear terms to that effect. In the case of a deed made after the coming into force of the Inheritance (Family Provision) Act, 1938, it would in my view be, if anything, rather more difficult, since the widow now has her rights under that Act where she had no rights under the old law. But that point did not arise in *Langstone* v. *Hayes*, where the covenant had been made very much earlier.

I have already discussed in the "Diary" of 23rd February, 1946, the facts and decision in *Re Roberts* [1946] Ch. 1, a case which is, perhaps, worth bearing in mind as dealing with the presumption of advancement. In *Re Macadam* [1946] Ch. 73, the court had to deal with the remuneration of trustees who were also directors of a company in consequence of their position as trustees; this case was discussed fully in the "Diary" of 16th March, 1946. In *Cumberland* v. *Ireland* [1946] K.B. 264, the Court of Appeal considered the problem—which, oddly enough, was novel—of a vendor having left a large quantity of rubbish behind on the premises at completion. It was held that the vendor was liable in damages for the cost of clearing the rubbish away, either on the ground of breach of contract, or of breach of trust. I have heard experienced practitioners express surprise at this decision, which rather cuts across the accepted belief that completion only too often operates as a waiver by the purchaser of his rights against the vendor. *Cumberland* v. *Ireland* is a salutary reminder that vendors cannot always so easily escape their liabilities. It is particularly important at the present time when the purchaser of house property may well be desperately anxious to assume possession. *Cumberland* v. *Ireland* was fully discussed in the "Diary" of 1st June, 1946.

In *Rees* v. *Hughes* [1946] K.B. 517, the Court of Appeal held that, having regard to the legislation of the last sixty years relating to the property of married women, it is no longer the law that a husband is liable for the funeral expenses of his wife, if the wife leaves a solvent estate. The court was not called upon to decide and did not decide what the position would be if the wife's estate were insolvent. In *Eyre* v. *Johnson* [1946] K.B. 481, Denning, J., had to consider the effect of a repairing covenant in a lease which expired at a date when the present severe restrictions on building operations and repairs were in force. It appears that the tenant, after giving notice to terminate the tenancy, applied to the Minister for licences to execute the necessary repairs, and that these licences were refused. The premises were yielded up to the landlord unrepaired. The learned judge said that the first answer was that this condition of non-repair was really brought about by a series of breaches of the covenant to keep in repair. If the lessee had performed his covenant from 1939 to 1941 when there was no regulation on the matter or even in the years after 1941 while there was a regulation but the limit was at first £500 and then £100, there would have been nothing to prevent him from delivering them up in proper repair. Denning, J., however, went further and said that it seemed to him that although illegality which completely prevents the performance of a contract may give rise to frustration in some cases, illegality as to the performance of one clause which does not amount to frustration in any sense of the word, does not carry with it the necessary consequence that the party is absolved from paying damages. The landlord had performed all his part of the bargain: the tenant had had the premises all the time; and it was no excuse that circumstances which he could not control had prevented the tenant's compliance with the repairing covenant. This decision is to be welcomed in that it solves a difficulty which many of us had felt. There had been, I believe, one or two earlier unreported cases to the same effect, but they were difficult to find, and I do not think that in any of them the tenant had actually been refused a licence. However, I must not linger on this case, which is really proper to a different column in this Journal.

In *Dwyer* v. *Mansfield* [1946] K.B. 437, two shopkeepers sued an intervening greengrocer for nuisance on the ground that he had allowed, and indeed encouraged, queues to collect to buy fruit and vegetables, and that those queues had interfered with access to the plaintiffs' shops. The events complained of occurred in January and February, 1945. The queues were said not to have been so serious in March and April, but to have been considerable again at the end of May and in June. The defendant's evidence, which the judge accepted, was that in February he received a consignment of oranges which he was bound to sell to all comers. Queues formed for the purchase of the oranges, but he obtained permission from the police to sell oranges at the back of his shop and the queues then approached from an alley at the back of his premises. In June, 1945, the trouble was a shortage of potatoes, and he then sold only one pound of potatoes per ration book. I do not gather from the report whether the transaction with the potatoes was as a result of some order binding upon him or whether it flowed from his own sense of fairness. There are of course a considerable number of cases about the liabilities of persons who collect queues to the annoyance and detriment of their neighbours, and in particular injunctions have been granted on this ground in two cases in the Chancery Division, *Barber* v. *Penley* [1893] 2 Ch. 447, and *Lyons, Sons & Co., Ltd.* v. *Gulliver* [1914] 1 Ch. 631, in both of which cases the queue was collected by a theatre. The question bristles with difficulties, and in particular there is a difference of judicial opinion as to the degree to which the police ought to interfere and the effects of the interference or non-interference of the police upon the private rights of the contending parties. However, in *Dwyer* v. *Mansfield*, Atkinson, J., took the view that even if the nuisance had been proved, it had not been proved that the defendant created or was responsible for the nuisance. He was satisfied from the evidence of the defendant that it was the short supply of the potatoes which caused these queues to collect and that short supply was not a matter for which the defendant was responsible. The learned judge said nothing about the oranges, in the case of which, according to the report, the defendant was under an actual obligation to sell to all comers. Atkinson, J., said that he asked himself the question whether the defendant did anything unnecessary or unreasonable, and therefore unjustifiable, and that he was satisfied that he did not. On the contrary he thought that the defendant did everything he could to meet the situation. No doubt for some time to come a similar decision is to be expected for the protection of the promoters of fish queues, but it arises out of the present difficulties, and I think it unlikely that similar decisions are to be expected permanently, even in the case of food shops. At the present day I should hesitate to advise the promoter of a queue for a commodity other than food that he would successfully resist Chancery proceedings brought by his neighbours for an injunction restraining any nuisance caused to those neighbours by such a queue.

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††Newcastle-upon-Tyne, 13, 20 (B.), 21 (J.S.)
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Circuit 2—Durham

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††Barrow - in - Furness, 5, 6
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††Whitehaven, 12
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Circuit 4—Lancashire

His Hon. Judge Peel, O.B.E., K.C.
††Blackburn, 12 (R.B.), 14, 17, 21 (J.S.) (B.)
††Blackpool, 5, 11 (J.S.) (B.), 12, 18, 19 (R.B.), 20
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††Preston, 4, 10 (J.S.) (B.), 17 (R.B.)

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Circuit 6—Lancashire

His Hon. Judge Crosthwaite
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††Liverpool, 3, 4, 5, 6, 7, 10, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28
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Southport, 4, 18
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Circuit 7—Cheshire

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*Birkenhead, 6, 12, 14, 19 (R.), 21, 25, 26
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*Crewe, 7
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*Northwich, 20
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Circuit 8—Lancashire

His Hon. Judge Rhodes
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††Manchester, 3, 4, 5, 6, 11, 12, 13, 14 (B.), 17, 18, 19, 20, 25, 26, 27, 28 (B.)

Circuit 10-Lancashire

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*Ashton-under-Lyne, 7
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*Macclesfield, 25
*Oldham, 6, 12, 13 (J.S.), 28
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Circuit 12—Yorkshire

His Hon. Judge Rice-Jones
*Bradford, 7 (J.S.), 10, 11, 13, 14
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*Halifax, 21
*Huddersfield, 18, 19
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Otley, 5
Skipton, 6
Wakefield, 12

Circuit 13—Yorkshire

His Hon. Judge Essenhigh
*Barnsley, 5, 6, 7
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Rotherham, 18, 19
*Sheffield, 4 (J.S.), 13, 14, 20, 21, 27, 28

Circuit 14—Yorkshire

His Hon. Judge Stewart
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York, 4

Circuit 16—Yorkshire

His Hon. Judge Griffith
Beverley, 7
Bridlington, 3
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Great Driffield,
††Kingston upon Hull, 10 (R.), 11 (R.), 12, 13, 14 (J.S.), 17 (R.B.), 24 (R.)
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Scarborough, 4, 5, 11 (R.B.)
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Thorne, 20
Whitby,

Circuit 17—Lincolnshire

His Hon. Judge Shove
Barton on Humber,
††Boston, 20 (R.), 27
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††Great Grimsby, 5 (J.S.), 6 (R.B.), 7, 19 (J.S.), 20 (*R. every Wednesday*)
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Circuit 18—Nottinghamshire

His Hon. Judge Caporn
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*Nottingham, 6 (R.B.), 12, 13, 14 (J.S.), 19, 20, 21 (B.)
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Circuit 19-Derbyshire

His Hon. Judge Willes
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Bakewell,
Burton-on-Trent, 12 (R.B.)
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Circuit 20—Leicestershire

His Hon. Judge Field, K.C
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*Bedford, 11 (R.B.), 19
Hinckley,
Kettering, 18
*Leicester, 3, 4, 5 (J.S.), (B.), 6 (B.), 7 (B.)
Loughborough, 11
Market Harborough,
Melton Mowbray, 21
Oakham,
Stamford,
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Circuit 21—Warwickshire

His Hon Judge Finnemore
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Great Malvern, 3
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*Hereford, 11, 25
*Kidderminster, 4
Kington, 12
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*Leominster, 10
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Circuit 23 — Northamptonshire

His Hon. Judge Forbes
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*Coventry, 3 (R.B.) 4, 24
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Leighton Buzzard, 6
*Northampton, 11 (R.), (R.B.), 17, 18
Nuneaton, 12
Rugby, 13
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Stow-on-the-Wold,
Stratford-on-Avon, 27
*Warwick, 21 (R.B.)

Circuit 24 — Monmouthshire

His Hon. Judge Thomas
Abergavenny, 14
Abertillery 11
Bargoed, 12
Barry, 6
††Cardiff, 3, 4, 5, 7
Chepstow, 17
Monmouth, 18
*Newport, 20, 21
Pontypool and Blaenavon, 19
*Tredegar, 13

Circuit 25—Staffordshire

His Hon. Judge Norris
*Dudley, 11, 18, 25
Redditch, 14
*Walsall, 13, 20, 27
*West Bromwich, 12, 19, 26
*Wolverhampton, 21, 28

Circuit 26—Staffordshire

His Hon. Judge Tucker
*Hanley, 6, 20, 21
Leek, 17
Lichfield, 3
Newcastle - under - Lyme, 18
*Stafford, 7
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Tamworth, 14
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Circuit 28-Shropshire

His Hon. Judge Samuel, K.C.
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Bridgnorth,
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Craven Arms,
Knighton,
Llandrindod Wells,
Llanfyllin, 14
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*Newtown, 6
Oswestry, 11
*Shewsbury, 17, 20
Wellington, 18
Welshpool, 12
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Circuit 29—Caernarvonshire

His Hon. Judge Ernest Evans, K.C.
Bala, 18
††Bangor, 10
Blaenau Festiniog,
*Caernarvon, 12
Colwyn Bay,
Conway, 13
Corwen, 18
Denbigh, 25
Dolgelly, 17
Flint, 12 (R.)
Holyhead,
Holywell, 21
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Llangefni,
Llanwrst, 21 (R.)
Menai Bridge, 11
Mold, 20
*Portmadoc,
Pwllheli, 14
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*Ruthin,
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Circuit 30—Glamorganshire

His Hon. Judge Williams, K.C
*Aberdare, 4
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Caerphilly, 20 (R.)
Merthyr Tydfil, 6
*Mountain Ash, 5
Neath, 19, 20, 21
*Pontypridd, 12, 13, 14
*Porth, 10
Port Talbot, 18
*Ystradyfodwg, 11

Circuit 31—Carmarthenshire

His Hon. Judge Morris, K.C.
Aberayron,
††Aberystwyth, 21
Cardigan,
††Carmarthen and Ammanford, 4, 5
††Haverfordwest, 19
Lampeter, 7
Llandovery, 24
Llanelly, 25, 27
Narberth, 17
Newcastle Emlyn, 3
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*Swansea, 10, 11, 12, 13, 14

Circuit 32—Norfolk

His Hon. Judge Carey Evans
Beccles, 4 (R.)
Diss,
Downham Market,
East Dereham, 12
Fakenham, 4
††Great Yarmouth, 13
Harleston, 17
Holt,
††King's Lynn, 6
*Lowestoft,
North Walsham,
*Norwich, 24, 25, 26
Swaffham,
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Circuit 33—Essex

His Hon. Judge Hildesley, K.C.
Braintree,
*Bury St. Edmunds, 4
*Chelmsford, 11
Clacton, 18
Colchester, 5, 6
Eye, 21
Felixstowe,
Halesworth, 3
Halstead, 7
Harwich,
Ipswich, 12, 13, 14
††Maldon,
Saxmundham,
Stowmarket, 21 (R.)
Sudbury,
Woodbridge, 26

Circuit 34-Middlesex

His Hon. Judge Tudor Rees
His Hon. Judge Pratt
Brentford, 3, 5, 7, 10, 12, 14, 17, 19, 21, 24, 26, 28,
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Circuit 35 — Cambridgeshire

His Hon. Judge Campbell
Biggleswade, 4
Bishops Stortford, 5
*Cambridge, 7 (R.B.), 19 (J.S.) (B.), 20
Ely, 17
Hitchin, 14
*Huntingdon, 21 (R.)
Luton, 6 (J.S.) (B.), 7, 20 (R.B.)
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Newmarket, 21
*Oundle, 12
Peterborough, 7 (R.), 10 11
Royston,
Saffron Walden,
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Circuit 36—Berkshire

His Hon. Judge Hurst
*Aylesbury, 7, 27 (R.B.)
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High Wycombe, 6
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Oxford, 10, 17 (R.B.), 24
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Circuit 37-Middlesex

His Hon. Judge Sir Gerald Hargreaves
His Hon. Judge Alun Pugh
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*St. Albans, 18, 21
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His Hon. Judge Whitmee
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*Edmonton, 6, 7, 13, 14, 18, 20, 21, 27, 28
Hertford, 5
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Circuit 39-Middlesex

His Hon. Judge Engelbach
His Hon. Judge Whitmee (Add.)
Shoreditch, 3, 4, 6, 7, 10, 11, 13, 14, 17, 18, 20, 21, 24, 25, 27, 28
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Circuit 40-Middlesex

His Hon. Judge Alchin
His Hon. Judge Drucquer (Add.)
His Hon. Judge Alun Pugh (Add.)
Bow, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28

Circuit 41-Middlesex

His Hon. Judge Earengey, K.C.
His Hon. Judge Trevor Hunter, K.C. (Add.)
Clerkenwell, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28

Circuit 42-Middlesex

His Hon. Judge David Davies, K.C.
Bloomsbury, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28

Circuit 43-Middlesex

His Hon. Judge Bensley Wells
Marylebone, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28

Circuit 44-Middlesex

His Hon. Judge Drucquer
His Hon. Judge Davies, K.C. (Add.)
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Circuit 45—Surrey

His Hon. Judge Hancock, M.C.
His Hon. Judge Hurst (Add.)
*Kingston, 4, 7, 11, 14, 18, 21, 25, 28
*Wandsworth, 3, 5, 6, 10, 12, 13, 17, 19, 20, 24, 26, 27

Circuit 46-Middlesex

His Hon. Judge Neal
*Willesden, 3, 4, 5, 6, 7, 11, 12, 13, 14, 17, 18, 19, 20, 21, 25, 26, 27, 28

Circuit 47—Kent

His Hon. Judge Daynes, K.C.
Southwark, 3, 7, 10, 14, 17, 21, 24, 28
Woolwich, 6, 12, 13, 20, 27

Circuit 48—Surrey

His Hon. Judge Collingwood
His Hon. Judge Dale
Dorking,
Epsom, 4, 5, 12, 25, 26
*Guildford, 13, 27
Horsham,
Lambeth, 4, 6, 7, 10, 11, 12, 13, 14, 17, 18, 20, 21, 24, 25, 28
Redhill, 19

Circuit 49—Kent

His Hon. Judge Clements
Ashford, 10
*Canterbury, 4
Cranbrook, 17
Deal,
†Dover, 19
Folkestone,
Hythe, 20
*Maidstone, 14
Margate,
†Ramsgate, 12
††Rochester, 5, 6
Sheerness, 13
Sittingbourne, 18
Tenterden,

Circuit 50—Sussex

His Hon. Judge Archer, K.C.
Arundel,
Brighton, 6, 7, 13, 20, 21, 27, 28
††Chichester 14
*Eastbourne, 12
*Hastings, 4, 25
Haywards Heath,
*Lewes, 3
Petworth, 17
Worthing, 11

Circuit 51 — Hampshire

His Hon. Judge Topham, K.C.
Aldershot, 14
Basingstoke, 12
Bishops Waltham, 21
Farnham, 5
*Newport, 26
Petersfield,
††Portsmouth, 3 (B.), 6, 13, 20
Romsey, 7
Ryde,
††Southampton, 4, 11, 12 (B.), 18
*Winchester, 19

Circuit 52—Wiltshire

His Hon. Judge Jenkins, K.C.
*Bath, 6 (B.), 13 (B.)
Calne, 14
Chippenham, 11
Cirencester, 21
Devizes, 10
Dursley, 20
*Frome, 19 (B.)
Hungerford,
Malmesbury, 20 (R.)
Marlborough, 18
Melksham,
*Newbury, 3 (B.)
Stroud, 4
*Swindon, 5, 12 (B.)
Trowbridge, 7
Warminster, 15
Wincanton 22

Circuit 54-Somersetshire

His Hon. Judge Wethered
††Bridgwater, 14
††Bristol, 3, 6, 10 (J.S.), 11 (R.), 12, 13, 21 (B.), 24 (J.S.), 25, 26, 27, 28 (B.)
Gloucester, 17, 18
Minehead, 11
Newent,
Newnham,
Thornbury,
*Wells, 4
Weston-super-Mare, 5

Circuit 55 — shire

His Hon. Judge Armstrong
Andover, 12
Blandford, 14
*Bournemouth, 11 (R.), 17, 18, 20
Bridport, 25 (R.)
Crewkerne, 18 (R.)
*Dorchester, 7
Lymington, 21
*Poole, 19, 26 (R.)
Ringwood, 27
*Salisbury, 6
Shaftesbury, 3
Swanage, 5
*Weymouth, 4
Wimborne, 10
*Yeovil, 13

Circuit 56—Kent

His Hon. Judge Sir Gerald Hurst, K.C.
Bromley, 4, 5, 18, 19
*Croydon, 3, 11, 12, 17, 24, 25, 26
Dartford, 6, 13, 27
East Grinstead,
Gravesend, 10
Sevenoaks,
Tonbridge,
Tunbridge Wells, 20

Circuit 57-Devonshire

His Hon. Judge Thesiger
Axminster, 17
††Barnstaple, 25
Bideford, 26
Chard, 18
††Exeter, 13, 14
Honiton,
Langport, 17 (R.)
Newton Abbot, 20
Okehampton,
South Molton, 27
Taunton, 10
Tiverton, 19
*Torquay, 11, 12
Torrington,
Totnes, 21
Wellington, 24

Circuit 58—Essex

His Hon. Judge Hunter, K.C.
His Hon. Judge Andrew
His Hon. Judge Pratt (Add.)
Brentwood, 14 (R.)
Gray's Thurrock, 4 (R.)
Ilford, 3 (R.), 5, 6, 10 (R.), 11, 12, 13, 17 (R.), 18, 19, 20, 24 (R.), 25, 26, 27
*Southend, 5, 6 (R.), 7, 12 (R.), 13, 19 (R.B.), 20, 21, 26 (R.)

Circuit 59—Cornwall

His Hon. Judge Armstrong
Bodmin,
Camelford,
Falmouth, 4
Helston,
Holsworthy,
Kingsbridge, 14
Launceston,
Liskeard, 27 (R.)
Newquay, 5 *
††Penzance, 12
Plymouth, 5 (R.), 18, 19, 20, 21
Redruth, 20 (R.)
St. Austell, 6
Tavistock, 13
††Truro, 7

The Mayor's & City of London Court

His Hon. Judge Dobson
His Hon. Judge Beazley
His Hon. Judge Thomas
His Hon. Judge McClure
Guildhall, 3, 4, 5 (A.), 6, 7 (J.S.), 10, 11, 12, 13, 14 (J.S.), 17, 18, 19 (A.), 20, 21 (J.S.), 24, 25, 26 (A.), 27, 28 (J.S.)

*= Bankruptcy Court
† = Admiralty Court
(R.) = Registrar
(J.S.) = Judgment Summonses
(B.) = Bankruptcy
(R.B.) = Registrar in Bankruptcy
(Add.) = Additional Judge
(A.) = Admiralty

LANDLORD AND TENANT NOTEBOOK

NOTICE OF DISREPAIR

McCarrick v. *Liverpool Corporation* (1946), 62 T.L.R. 730; 91 SOL. J. 41 (H.L.) has finally settled the question whether the undertaking to repair imposed by the Housing Act, 1936, s. 2 (1), has all the characteristics of a landlord's express covenant to repair, including the provision that there shall be no liability until he has notice of the defect. The point had been much alluded to in dicta, and much discussed by writers on the subject.

It was held long ago, in *Walker* v. *Hobbs & Co.* (1889), 23 Q.B.D. 458, that the provision gave the tenant a right to claim damages as for breach of covenant—though the action, based on the Housing of the Working Classes Act, 1885, s. 12, alleged a breach of *condition* that the house was fit at the commencement of the tenancy, not a breach of undertaking that it should be kept fit.

The judgment in that case emphasised the word " implied " in the phrase " there shall be implied a condition " and rejected the suggestion that " condition " should be given its technical meaning; nevertheless it was for long considered arguable whether the result was exactly the same as if the landlord had covenanted expressly. In *Morgan* v. *Liverpool Corporation* [1927] 2 K.B. 131 (C.A.), decided under the Housing Act, 1925, the court was unanimous in holding that the result was the same as if there had been a contractual term, and *McCarrick* v. *Liverpool Corporation* has now approved that decision.

It may well be that the appellant felt justified in bringing the matter before the House of Lords by some of the dicta uttered by members of that tribunal in *Summers* v. *Salford Corporation* [1943] A.C. 283. In an article which appeared in the *Modern Law Review* for April, 1946, the following passages occurred: " The opinions expressed by the House of Lords in the case of *Summers* v. *Salford Corporation* may provide a means of escape from the doctrine that the obligation is one of contract, and that in order to render the landlord liable he must receive notice. It would seem that, in future, the section will be construed as creating ' a statutory obligation to repair imposed in the public interest ' and that the principle laid down in *Morgan* v. *Liverpool Corporation* will be subject to reconsideration and will probably be reversed " and " Unfortunately, it may be years before the point is settled." Neither expectation nor fear has been realised.

Encouragement may well have been afforded to the appellant in the recent case and to the writer of the article cited by the fact that it was Lord Atkin, who as Atkin, L.J., had delivered one of the judgments in *Morgan* v. *Liverpool Corporation*, who showed some signs of a disposition to recant in *Summers* v. *Salford Corporation*, giving us a dictum of which the words placed by the writer in inverted commas were part: " I can see that different considerations may arise in the case of an obligation to repair imposed in the public interest, and I think that this question must be left open, and I reserve to myself the right to reconsider my former decision if the necessity arises." But in *McCarrick* v. *Liverpool Corporation*, the five law lords who heard the appeal were unanimous in praising the judgment of Atkin, L.J., and content to observe that the matter had been left open in the case in which Lord Atkin showed signs of doubting the validity of that judgment.

While this point is now settled, there are others arising out of the implied qualification of a landlord's covenant which may yet reach the House of Lords. I would mention the following: Is it material or immaterial that the defect is latent? Does it matter how the landlord acquires his knowledge of the defect? And does his liability commence with notice, or has he a reasonable time in which to attend to the trouble?

The question of latent defects came before the court in *Hugall* v. *M'Lean* (1885), 53 L.T. 94, and again in *Fisher* v. *Walters* [1926] 2 K.B. 315. In the former there was an express covenant by a landlord to keep drains in repair. The lease gave him no right of entry. The drains were out of order, and though the jury found that the landlord could have known and the tenant had no means of knowing of the state of affairs, it was held that the absence of notice excused the covenantor. This decision was distinguished in *Fisher* v. *Walters*, brought under the Housing, etc., Act, 1909, s. 15; at all events by MacKinnon, J., whose colleague, Finlay, J., did not mention *Hugall* v. *M'Lean*. According to MacKinnon, J., the vital difference was that the covenantor in the older case had no right to enter and inspect, while the statute expressly gives the landlord such rights.

Though in *McCarrick* v. *Liverpool Corporation* there can have been no question of the defect being latent—what had happened was that the wife of the tenant broke her leg by slipping on some defective stone steps—the above authorities were brought into the discussion and figured in the review of authorities given by two of the law lords. Both Lord Porter and Lord Simonds inclined to the view that a landlord under covenant has an implied right to enter, so that the *ratio decidendi* ascribed to *Hugall* v. *M'Lean* in *Fisher* v. *Walters* was not the true one; and Lord Simonds said in so many words that the latter was inconsistent with higher authority and could not stand. So if, despite what has happened to the forecasts given in the *Modern Law Review*, I may be rash enough to indulge in prediction, I would say that no distinction will in future be drawn between latent and patent defects when applying the rule. Nevertheless, regard should be had to the circumstances set out by Lord Sumner in the course of *Murphy* v. *Hurly* [1922] 1 A.C. 369, as being the foundation of the implied provision, notably the second one; they were (1) the tenant is in occupation and the landlord is not; (2) the tenant therefore has the means of knowledge peculiarly in his possession, while the landlord has *no right of access* and no means of knowing the condition of the structure from time to time . . . ; and (3) the repairs of dwelling-houses, however frequently required, are still casual and occasional and do not demand incessant vigilance and almost daily care. But even when giving weight to the second set of considerations, and assuming a landlord to have a right of access and the tenant to be unaware of the defect, it is right to remember that the tenant is in a better position to acquire the necessary knowledge than is the landlord. So I think that, on the whole, the trend of the authorities favours the proposition that there is no distinction between disrepair occasioned by patent and that due to latent defects.

On the question whether it is material how the landlord acquires knowledge, there appears to be less authority. In his judgment in *Torrens* v. *Walker* [1906] 2 Ch. 166, Warrington, J., said: " It is not necessary to decide whether the notice must come from the tenant, but I think that it must come from the tenant, and not *aliunde*." Naturally, in most cases it would come from the tenant; but one may doubt whether it is consistent with the underlying principle that a landlord, receiving reliable information from a third party that damage had been done to a house while the tenant was away on holiday, would be excused performance of his covenant until the report was confirmed by the covenantee.

This brings me to the remaining question: how soon must a landlord act when duly informed? On this question—which might well be important if a landlord, living far away from demised premises, were advised of a leak in the roof during a rainy period—there appears to be even less authority. The decision in *Leanse* v. *Egerton* (*Lord*) [1943] K.B. 323, showed that in a nuisance case the defendant has a reasonable time in which to remedy the defect, though something must be done promptly. Though nuisance is a tort, I suggest that the same principle would be applied in the case of breach of a landlord's covenant to repair.

TO-DAY AND YESTERDAY

January 20.—On 20th January, 1836, Lord Chief Justice Denman wrote to his wife: "I give myself a little holiday from law papers that I may have the pleasure of again writing to you . . . I called on Jekyll on Sunday, who is either eighty-two or eighty-three, extremely deaf and entirely helpless, carried by servants to and from his carriage, but as lively as a bird in raptures at my calling, with a voice deeper than mine and peals of laughter . . . The Attorney-General's reconciliation with Government he called the camel (Campbell) going through the eye of a needle . . . Afterwards I met both Mr. Attorney-General and Lady Stratheden (for that is to be her title) at Lady Holland's . . . I have generally walked down to Westminster, not liking the carriage unless it rains." Edward Jekyll, wit and politician, was a bencher of the Inner Temple. Lord Eldon had made him a Master in Chancery, but the appointment was condemned, for his legal knowledge was insufficient and his practice was a common law one. Campbell's difference with the Government arose from his having been passed over when the post of Master of the Rolls was vacant. He was induced not to resign by the creation of his wife Baroness Stratheden.

January 21.—On 21st January, 1831, the future Lord Cockburn noted in his journal: "Brougham, ambitious to leave the marks of his footsteps everywhere has written to our Dean (John Hope) for his opinion and that of Jeffrey and me on a scheme which he has of introducing patents of precedence at the Scotch bar. We have given the project a decided negative. It is very doubtful whether the Crown has power to introduce such a thing . . . I have never known a vestige of professional jealousy at our bar. The bar of England is constantly degraded by it . . . I cannot doubt that the prevalence of this weakness is very much owing to these artificial distinctions. Brougham has not said so, but I suspect that this is but part of a plan . . . of introducing English counsel to our bar and English counsel to our courts—an ignorant and reckless project."

January 22.—On 22nd January, 1765, while the Court of King's Bench was sitting at the Guildhall, "the floor gave way but was prevented from falling entirely down by some goods which were stored in the cellar underneath it and happily no person received any other hurt than being greatly frightened. In the confusion in getting out of the hall many lost their hats and wigs. The court adjourned to the hustings in the common hall to finish the business of the day."

January 23.—On 23rd January, 1685, the Gray's Inn benchers ordered "that there be henceforth an Under Treasurer for this Society and that Mr. Clare be the present Under Treasurer."

January 24.—Sir Arthur Underhill, senior conveyancing counsel to the High Court, died in his eighty-ninth year on 24th January, 1939. He was a great figure in Lincoln's Inn and, though his days had passed in the less sensational paths of the law, he was a keen observer of life in the world and had a strong sense of humour. His work in connection with the Law of Property Acts earned him his knighthood. His father was a Wolverhampton solicitor.

January 25.—On 25th January, 1786, the Gray's Inn benchers ordered a book to be provided for the members who desired to be called to the bar to sign their names when they received the Sacrament, that being a prerequisite. The Preacher and the Clerk of the Chapel were to subscribe their names in testimony. It was also ordered that the two constables who arrested one of the men guilty of a burglary and robbery in Mr. Alan Chambre's chambers should be given two guineas each. Chambre was a bencher and later a judge of the Common Pleas.

January 26.—John Leach, admitted to the Middle Temple on 26th January, 1785, had originally intended to be an architect and, in the office of Sir Robert Taylor, who designed Stone Buildings, Lincoln's Inn, he made the working drawings. He became Vice-Chancellor in 1818 and Master of the Rolls in 1827.

Between England and Jamaica

A King's Counsel recently flew from Jamaica to defend a Jamaican in the R.A.F. charged at the Manchester Assizes with murder; there was an acquittal. The geographical goal of his journey, it must be confessed, provided less collateral incentive than Mr. Justice Humphreys enjoyed when, during his career at the Bar, he was called on to travel to Jamaica to defend a young man accused of murder. His clerk, fearing for his licensing practice, discouraged acceptance, but, as he related in his recent pleasant book of recollections, he had always wanted to visit the West Indies and seized this opportunity of going there in January, the very best season of the year, at no expense to himself "and nothing to put on the other side of the ledger but a possible prospective loss of clients in the future." In order to appear he had to go through the ceremony of being called to the Bar of Jamaica, subject, however, to an undertaking not to accept any other briefs during his stay. It was 1910, and the case concerned the unhappy love of a boy, the son of a rich planter, for a young married woman. They had decided to commit suicide together and he had bought two packets of morphine, saying he wished to destroy a sick pet monkey. They met in a plantation; each swallowed the contents of one packet; then they went to sleep in each other's arms. By some chance, his dose was not fatal and he awoke again and recovered to find himself facing a charge of murder. For two months before the trial the case was the universal topic of conversation and the first part of the legal battle consisted of a series of challenges by the prosecution and the defence to eliminate from the jury any man who had allowed his views to be known. The final state of the jury-box was diagnosed as "doubtful but slightly in favour of the defence." The Criminal Evidence Act had not been adopted in Jamaica, and so the accused was not even under a moral obligation to give evidence. The defence made the most of a suggestion that something he had told the police might mean that at the last minute he had changed his mind and asked the girl to give him back her powder. Following this lead, the jury acquitted.

Venture in India

The practice of the future judge suffered not at all from his transatlantic expedition. A similar absence, however, was the ruin of one celebrated if not eminent Victorian, Serjeant Ballantine, who incautiously agreed to go to India to defend the Maharajah of Baroda, alleged to have attempted to poison the British Resident. In 1875 the fee of £10,000 was no small inducement, quite apart from the satisfaction of being greeted with a hymn of praise on his entry into his client's dominions:

"May your merits be praised in every nook and corner of our country, and may our King be restored to his freedom and throne!

"Then will your praises be sung everywhere.

"Our hearts are filled with rising joy at the mention of your name, and we entertain the dear hope that the cloud of calamity that hangs over our King will be swept away.

"Then will your praises be sung everywhere.

"May pure justice be dealt to our prince in a pure and undefiled way! In that case we shall sing merry song expressive of your great glory.

"Then will your praises be sung everywhere."

In the end the Commissioners, presided over by the Chief Justice of Bengal, disagreed and the Government's decision to depose the Maharajah was expressed not to be made in reliance on the result of the inquiry. For Ballantine's practice the result of his absence proved fatal.

The next quarterly meeting of the Lawyers' Prayer Union is to be held on Monday, 10th February, at 6 p.m. (preceded by half-an-hour for tea), in the Council Room of The Law Society. Canon N. D. Coleman (Translation Secretary of The British and Foreign Bible Society) will speak on "The Task of Translation."

A meeting of the United Law Society was held in the Barristers' Refreshment Room, Lincoln's Inn, on Monday, 13th January. Mr. R. J. Kent was in the chair. Mr. L. F. Stemp proposed "That there should be a United States of Europe." Mr. S. E. Redfern opposed. There also spoke: Messrs. O. T. Hill, E. D. Smith, G. C. Raffety, R. J. Kent and F. R. McQuown. The motion was lost by one vote.

The sixty-sixth rent tribunal in England, which came into operation on Monday, 13th January, covers *Burnley*, Colne, Haslingden and Nelson. Chairman: Mr. J. M. Battle; Member and Reserve Chairman: Mr. H. Thornton; Member: Mr. C. Crowder; Office: 2 Hargreaves Street, Burnley. Additions have been made as follows to the areas of tribunals already set up: *Brighton*, Bexhill, Lewes, Bognor Regis, and the rural district of Hailsham; *Bournemouth*, the rural district of Dorchester; *Norwich*, the rural district of Blofield and Flegg; *Sheffield*, the rural district of Chesterfield; *Lincoln*, the rural district of East Elloe; *Doncaster*, the rural district of Goole; *Oxford*, Chipping Norton; *Coventry*, Leamington Spa; *Watford*, Hoddesdon.

NOTES OF CASES

HOUSE OF LORDS

Read *v.* J. Lyons & Co., Ltd.

Viscount Simon, Lord Macmillan, Lord Porter, Lord Simonds and Lord Uthwatt

18th October, 1946

Factory—Work with explosives—Employee injured by explosion—Absence of negligence—Right to damages.

Appeal from a decision of the Court of Appeal (Scott, MacKinnon and du Parcq, L.JJ.), reversing a decision of Cassels, J.

By an agreement between the Ministry of Supply and the respondent company, the latter undertook the operation of an ordnance factory as agents for the Ministry. The company carried on in the factory the operation of filling shell-cases with high explosives. The appellant, an employee of the Ministry, with the duty of inspecting the filling of shell-cases, had to be present in the shell-filling shop. In August, 1942, while she was lawfully there in discharge of her duty, an explosion occurred which injured her. No negligence was averred or proved against the company, and the question for decision was whether the company were liable without any proof or inference that they were negligent. Cassels, J., considered that the case was governed by *Rylands* v. *Fletcher* (1866), L.R. 1 Ex. 265; (1868), L.R. 3 H.L. 330, and held that the company were liable on the ground that they were carrying on an ultra-hazardous activity and so were under a "strict liability" to take successful care to avoid causing harm to persons whether on or off the premises. The Court of Appeal reversed that decision, Scott, L.J., holding that a person on the premises had, in the absence of any proof of negligence, no cause of action, and that there must be an escape of the damage-causing thing from the premises and damage caused outside before the doctrine customarily associated with *Rylands* v. *Fletcher*, *supra*, could apply. The employee appealed. Their lordships took time.

VISCOUNT SIMON said that the employee who was in the factory in pursuance of a public duty was in the same position as an invitee. The company, managers of the factory as agents for the Ministry, had the same responsibility to an invitee as an ordinary occupier in control of the premises. None of the reported cases on the duties of an occupier to an invitee contained any hint of the proposition necessary to support the employee's claim. That work was being carried on which required a special care was a reason why the standard of care should be high, but it was no reason for saying that the occupier was liable for resulting damage to an invitee without any proof of negligence at all. Blackburn, J., in *Fletcher* v. *Rylands*, *supra*, said that the person who, for his own purposes, brought on to his lands, and collected and kept there, anything likely to do mischief if it escaped, must keep it in at his peril; and, if he did not do so, was, *prima facie*, answerable for all the damage which was the natural consequence of its escape. The strict liability recognised by the House to exist in *Rylands* v. *Fletcher*, *supra*, was conditioned by two elements which he might call (1) the condition of "escape" from the land of something likely to do mischief if it escaped, and (2) the condition of "non-natural use" of the land. In the case now before the House the first essential condition of "escape" did not seem to be present at all. "Escape," for the purpose of applying the proposition in *Rylands* v. *Fletcher*, *supra*, meant escape from a place where the defendant had occupation of, or control over, land to a place which was outside his occupation or control. Blackburn, J., had several times referred to the defendant's duty as being the duty of "keeping a thing in" at the defendant's peril; and by "keeping in" he did not mean preventing an explosive substance from exploding, but preventing a thing which might inflict mischief from escaping from the area which the defendant occupied or controlled. In the present case there was no escape of the relevant kind at all, and the employee's action failed on that ground. In those circumstances it became unnecessary to consider such questions as whether *Rylands* v. *Fletcher*, *supra*, applied where the claim was for damages for personal injury as distinguished from damage to property. Blackburn, J., in *Castle* v. *Stockton Waterworks* (1875), L.R. 10 Q.B. 457, treated damages under the *Rylands* v. *Fletcher*, *supra*, principle as covering damage to property, such as workmen's clothes or tools, but said nothing about liability for personal injuries. On the question what amounted to "non-natural" use of land, his lordship referred to *Rainham Chemical Works, Ltd.* v. *Belvedere Fish Guano Company* [1921] 2 A.C. 465, and said that, with all due regard to the admission at the trial, and to the dicta of Lord Buckmaster in that case, if the question had hereafter to be decided whether the making of munitions in a factory at the Government's request in time of war for the purpose of helping to defeat the enemy was a "non-natural" use of land, adopted by the occupier "for his own purposes," it would not seem to him that the House would be bound by that authority to say that it was. The appeal failed because there was no "escape" from the company's factory.

The other noble and learned lords delivered opinions agreeing that the appeal should be dismissed.

COUNSEL: *Paull*, K.C., and *Goldie*; *The Attorney-General* (Sir Hartley Shawcross, K.C.), and *H. L. Parker*.

SOLICITORS: *L. Bingham & Co.*; *Treasury Solicitor*.

[Reported by K. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

Smith *v.* Penny

Scott, Bucknill and Somervell, L.JJ.

13th November, 1946

Landlord and tenant—Rent restriction—Action for possession—House required by landlord "for himself"—Construction—Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 (23 & 24 *Geo.* 5, *c.* 32), *s.* 3, *Sched. I, para.* (*h*).

Appeal from a decision of Judge Archer, given at Worthing County Court.

The plaintiff landlord was employed by a brewery company to occupy one of their public-houses as tenant and manager. It was a term of the employment that he should be on the premises day and night. In 1943 he bought a house with vacant possession near the hotel with a view to accommodating staff in it after the war, and in the interim he let it to the defendant tenant for the duration of the war. In May, 1945, the tenant, when called upon to leave, refused to do so, whereupon the landlord brought this action. The landlord was separated from his wife and had two children. As he did not consider it right for the children to live in the hotel, he wished to accommodate them in the house nearby, and he had arranged for a married couple to live in the house and look after them. By Sched. I to the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, the county court judge may make an order for possession of a house within the Acts if he thinks it reasonable to do so, and "(*h*) the dwelling-house is reasonably required by the landlord for (i) himself . . ." It was contended for the tenant that the words "for himself" must be construed strictly as meaning for occupation by the landlord personally. The county court judge rejected that contention, decided in favour of the landlord on the issue of greater hardship, and made an order for possession. The tenant appealed.

SCOTT, L.J., said that the construction of "himself" as including the landlord's children was shown to be right by ground (ii) in para. (*h*), on which a landlord might claim possession, namely, that the house was required for the occupation of "any son or daughter of his over eighteen years of age." The Legislature could not have inserted that downward age limit unless it had considered that the word "himself"—the father and husband—necessarily included the children and the mother and wife. There was no authority directly on the point. If a separation took place between husband and wife, the court ought to assume that it was a separation which was in the circumstances proper and reasonable. No blame ought to be attributed to the husband who asked for a house for his children because he had been separated from his wife, in circumstances of which the court knew nothing and had properly not asked for information. The case should be considered as if the person available to look after the landlord's two young children had been the plaintiff's wife. There was evidence to support the county court judge's finding that the landlord reasonably required the house and that greater hardship would not be caused by making an order for possession than by refusing to make it. The appeal would be dismissed.

COUNSEL: *Dutton Briant*; *Curtis Raleigh*.

SOLICITORS: *Burton, Yeates & Hart*, for *Charles, Malcolm and Wilson*, Worthing; *Petch & Co.*, for *Bowles & Stevens*, Worthing.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Thorne *v.* Smith

Scott, Bucknill and Somervell, L.JJ.

10th December, 1946

Landlord and tenant—Landlord's claim to possession of premises for own occupation—Tenant's consent to order for possession—Landlord's sale of premises when vacant—Whether tenant entitled to compensation for misrepresentation—Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (10 & 11 *Geo.* 5, *c.* 17), *s.* 5 (6).

Appeal from a decision of Judge Hurst, given at Reading County Court.

The plaintiff landlord brought an action against the tenant of a house within the Rent Restriction Acts, claiming possession on the ground that, the tenant having been given notice to quit which had expired, the landlord required the premises for his own occupation. The tenant contended that the landlord did not reasonably require the house for his own occupation, and that greater hardship would result from the making than from the refusing of an order for possession. Before the county court judge, both parties being legally represented, the tenant consented to an order for possession; and in due course he vacated the house. The landlord sold the house with vacant possession some five weeks later. The tenant then applied to the county court for compensation from the landlord under s. 5 (6) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920. The county court judge refused the application, holding that the subsection only operated where the court making the order for possession had investigated the matter, and not where there had been a consent order, "misrepresentation" in the subsection meaning misrepresentation to the court, not to the tenant. The tenant appealed. By s. 5 (6) of the Act of 1920 " where a landlord has obtained an order for possession . . . and it is subsequently made to appear to the court that the order was obtained by misrepresentation or the concealment of material facts, the court may order the landlord to pay" his former tenant compensation. (*Cur. adv. vult.*)

SCOTT, L.J., said that, in his opinion, the tenant was entitled to the benefit of the subsection. Apart from it, a tenant could, if a misrepresentation were fraudulent, have brought a common-law action for damages for deceit, and any consent judgment would have been no defence. Even if the misrepresentation were innocent, the tenant could, in equity, have had the consent judgment set aside. By the subsection, Parliament conferred two new substantive rights to monetary compensation: first, for mere misrepresentation; secondly, for non-disclosure of material facts. The correlative result was that a landlord who obtained a judgment for possession by either means would be committing a statutory breach of duty. In the present case the order of the county court was plainly brought about by the landlord's misrepresentation which fell within the subsection. The appeal would, therefore, be allowed.

BUCKNILL and SOMERVELL, L.JJ., concurred.

COUNSEL: *R. G. Micklethwait* and *S. O. Olson*; *Havers*, K.C., and *E. H. Jessel*.

SOLICITORS: *Mills & Morley*, for *Ratcliffe & Duce*, Reading; *Hancock & Scott*, for *Bunker & Son*, Hove.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Hill *v.* Hill

Morton, Somervell and Cohen, L.JJ.

5th December, 1946

Sale of land—Lease containing option to purchase—Provision for renewal of lease—Notice to renew given out of time—Whether memorandum in writing required—Whether option to purchase to be incorporated in new lease—Law of Property Act, 1925 (15 & 16 *Geo.* 5, *c.* 20), *s.* 40.

Appeal from Vaisey, J.

By a lease dated 18th December, 1936, H granted to his son, the defendant, a lease of a shop and dwelling-house for a term of five years at a yearly rent of £52. Clause 6 provided that: " If on the death of the landlord at any time during the term hereby granted, the tenant shall be desirous of purchasing the fee simple of the demised premises and of such his desire shall within three calendar months after the death of the landlord deliver to the personal representatives of the landlord . . . notice in writing then the personal representatives of the landlord will upon the expiration of such notice and upon payment of the sum of £900 with interest" convey the premises to the tenant. Clause 7 provided that: " If the tenant shall be desirous of taking a new lease of the demised premises . . . and of such his desire shall deliver to the landlord . . . notice in writing not less than six months before the expiration of the said term then the landlord will . . . grant to the tenant a new lease of the premises hereby demised for a further term of five years . . . at the same rent and with and subject to the same covenants and conditions as in this present lease reserved and contained (the present covenant for renewal excepted)." The tenant paid his rent of £1 a week regularly, and it was entered in a rent book, the landlord initialling each payment. Inside the book the defendant had written, "Under lease dated December 18, 1936." The defendant failed to give notice of renewal before the 25th June, 1941. On 6th July the landlord sent for the defendant and pointed out that the lease had not been renewed. The defendant then agreed to renew and signed a note in the following terms: " 7th July, 1941. Ref. the lease of shop premises . . . this is the six months notice to renew the said lease for a further five years from the 25th December, 1941, to the 25th December, 1946, as the instructions on the present lease now held." That he signed and handed to the landlord. No new lease was ever executed. However, in January, 1942, there was a new rent book in which the defendant had written " Renewed lease December 25, 1941." The weekly payments of rent were entered in that book and initialled by the landlord week by week. The landlord died on the 3rd January, 1943, and on 9th February, 1943, the tenant gave notice in writing to the landlord's personal representatives under cl. 6 of the lease exercising his option to purchase, and registered an estate contract. The personal representatives in this action sought a declaration that there was no binding agreement upon them as executors of the landlord to sell the premises to the defendant. He counter-claimed for a declaration that they were bound to grant him a new lease, containing a like option to purchase as that contained in the original lease. In their reply the plaintiffs took the point that there was no memorandum in writing to satisfy s. 40 of the Law of Property Act, 1925.

VAISEY, J., held that there was an agreement to grant a new lease and that the agreement did not come within s. 40 of the Law of Property Act, 1925. He held, however, that the defendant was not entitled to have the option to purchase reproduced in such new lease. The defendant appealed. The plaintiffs cross-appealed.

MORTON, L.J., said that the landlord had in July, 1941, agreed to grant to the son a new lease. The question was whether that contract fell within s. 40 of the Law of Property Act, 1925, and required to be evidenced by a memorandum in writing. He inclined strongly to the view that the agreement did come within s. 40, and that the observations of Astbury, J., in *Morrell* v. *Studd & Millington* [1913] 2 Ch. 648, 659, might require further consideration. He referred in particular to the following sentence: " Now s. 4 of the Statute of Frauds only requires a note or memorandum of the agreement referred to in the section, which agreement does not come into existence until the offer and acceptance are complete, and therefore an agreement to extend the time for acceptance or an agreement that an acceptance, which by reason of its date need not be treated as an acceptance, shall be so treated so as to create a contract, is not an agreement which the statute requires to be evidenced in writing, if the note or memorandum contained in the signed offer is otherwise sufficient." It was unnecessary to express a considered view on the question, as they were of opinion that there was here a memorandum sufficient to satisfy s. 40. The initials of the landlord in the rent book of 1942 authenticated the words " renewed lease December 25, 1941 " as well as acknowledging the receipt of rent. The document referred to as " the renewed lease " was the notice of 7th July, 1941, plus the lease of 18th December, 1936. There was not a gap as to the terms of the contract which had to be supplied by verbal evidence. The last question was whether clause 7 of the lease, conferring an option to extend, entitled the defendant to a new lease containing an option to purchase. He thought that it did. *Sherwood* v. *Tucker* [1924] 2 Ch. 440 was a different case. *Batchelor* v. *Murphy* [1925] Ch. 220 and [1926] A.C. 63 covered this case. The new lease was to be a replica of the old, with the exception that cl. 7 was not to be included in it. The cross-appeal must be dismissed and the appeal allowed.

SOMERVELL and COHEN, L.JJ., agreed.

COUNSEL: *H. A. H. Christie*, K.C. and *H. A. Rose*; *C. Montgomery White*, K.C. and *E. M. Winterbotham*.

SOLICITORS: *Dennison, Horne & Co.* for *B. H. Bate and Son*, Blackheath, Birmingham; *Stafford Clark & Co.* for *George Green*, Blackheath, Birmingham.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION

Willis and Others *v.* Brooks and Others

Oliver, J. 12th November, 1946

Defamation—Libel—Newspaper article defamatory of trade union officials—Action by trade union.

Action tried by Oliver, J.

The secretary of the London Society of Compositors and the society itself sued the editor, publishers and printers of *Truth* for damages in respect of an article appearing under the heading " True to Type." A sum paid into court by the defendants with a denial of liability was accepted by the secretary of the society.

The article referred to a circular recently issued by the London Society of Compositors giving notice of a ballot to be taken on affiliation to the International Typographical Secretariat, and continued: "One would expect a democratic union . . . to send to each branch one ballot paper for each member. Otherwise there is bound to be a strong suspicion of selective balloting; it would obviously be quite simple to issue a ballot paper only to those who are internationally-minded and would vote for anything having an international flavour. To get a truly democratic result the union should clearly issue a ballot paper to each member, and with it a statement explaining the International Secretariat, giving reasons for and against affiliation . . . Long and successful practice in the manipulation of the undemocratic 'block-vote' has made trade unions expert in devising ballots guaranteed always to give a desired result." The union complained that the article conveyed that the ballot was deliberately rigged by substantially confining the opportunity to vote to such members as were known to be internationally minded. For the defendants it was contended that the article came to no more than a criticism of a system of voting, and that there was no actionable libel on the trade union itself. (*Cur. adv. vult.*)

OLIVER, J., found that the article was defamatory, and said that, in support of the defendants' contention that there was no actionable libel on the trade union, reliance had been placed on authorities from *Williams* v. *Beaumont* (1883), 131 E.R. 904, to *Manchester Corporation* v. *Williams* [1891] 10 Q.B. 94. Counsel for the plaintiffs cited Fraser's "Law of Libel" (7th ed., at p. 90), where the authors suggested that those decisions would not be upheld in the Court of Appeal. It had not been seriously contended for the defendants that an action for libel imputing, as here, something very like corruption would not lie in any circumstances at the suit of a trade union, but their contention was that the article was an accusation that one part of a union, namely, its officers, had cheated of their right to vote another part of the union, and that in such circumstances the union as a whole could not be plaintiff. Having read the judgments of the Court of Appeal in *National Union of General and Municipal Workers* v. *Gillian* [1946] K.B. 81; 89 SOL. J. 543, he (his lordship) agreed with the comment in Fraser's "Law of Libel." It appeared to him that the Court of Appeal had decided in that case that there was no difference in this matter between a trade union and a limited company, and that the entity of a trade union could not be divided into different parts consisting of various of its members, so as to deprive it of its right to sue if it were libelled. So to hold would mean that a member of the union could not sue the union if it libelled him, or that a shareholder could not sue the company. There would be judgment for the plaintiffs for £500 damages.

COUNSEL: *Paull*, K.C., and *F. H. Lawton*; *Sir Valentine Holmes*, K.C., and *Milmo*.

SOLICITORS: *Shaen, Roscoe & Co.*; *Lewis & Lewis and Gisborne & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

NOTES AND NEWS

Honours and Appointments

The Lord Chancellor has made the following appointments:—Mr. ALFRED DENNIS MURFIN has been appointed Assistant Registrar of Birmingham County Court and Assistant District Registrar in the District Registry of the High Court of Justice in Birmingham as from the 1st January, 1947; Mr. WERNER RALPH DAVIES has been appointed Registrar of the Salford and Oldham County Court as from the 13th January, 1947; Mr. CHARLES RONALD DAVIES has been appointed Joint Registrar of the Preston, Blackburn, Blackpool, Chorley and Lancaster County Courts and Joint District Registrar in the District Registries of the High Court of Justice in Preston, Blackburn and Blackpool as from the 20th January, 1947.

Mr. FRED WEBSTER, former town clerk of the Royal Borough of Kensington, has been appointed a member of the Local Government Boundary Commission in the place of Sir George Etherton, who has resigned. Mr. Webster was admitted in 1920.

The Board of Trade have appointed Mr. FELIX BERESFORD GOODMAN to be Official Receiver for the Bankruptcy District of the Plymouth County Court, with effect from 1st January, 1947, in place of Mr. Arthur Harold Ward, O.B.E. Mr. Goodman was admitted in 1934.

Professional Announcements

Messrs. BARTLETT AND GLUCKSTEIN of 199 Piccadilly, London, W.1, announce that they have taken into partnership Mr. FRANCIS BASIL GUEDALLA, of 8 Hocroft Road, London, N.W.2. The style and address of the firm remain unchanged.

Messrs. BIRD & BIRD, of 5 Gray's Inn Square, W.C.1 (temporary address: Burley House, 5-11 Theobalds Road, Gray's Inn, W.C.1), have taken into partnership, as from the 11th January, 1947, Mr. PERCIVAL BERNARD WILLIAMSON and Mr. MICHAEL JOHN VENNING.

Notes

The monthly meeting of the directors of the Law Association was held on the 6th January, Mr. S. Hewitt Pitt in the chair. The other directors present were Messrs. Ernest Goddard, H. T. Traer Harris, G. D. Hugh Jones, John Venning, William Winterbotham, and the Secretary, Mr. Andrew H. Morton. The result of the annual appeal to date was reported to be three life members and forty-six annual subscribers, all of whom were elected.

Wills and Bequests

Sir JOHN PAKEMAN, solicitor, of London Wall, E.C.2, left £33,653, with net personalty £33,039.

THE LAW SOCIETY'S REFRESHER COURSES

The following announcement has been made by the Council of The Law Society:—

There appears to be a sufficient demand to justify running one more Refresher Course. The Council accordingly propose to provide a whole-time course (A.13) from Monday, the 10th February to Friday, the 14th March, provided that sufficient students enrol.

Full particulars and entry forms may be obtained from the Society's offices.

It is particularly requested that solicitors who are in practice will co-operate by bringing this announcement to the attention of any of their partners or assistant solicitors who are still serving in the forces and who might like to enter for the course.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1946

No. 49. **Delegation of Emergency Powers** (Ministry of Commerce for Northern Ireland) Order. January 9.

No. 31. **Factories.** Dangerous Occurrences (Notification) Regulations. January 7.

No. 60. **Trading with the Enemy.** Bulgaria. Licence. January 9.

No. 65. Trading with the Enemy. Roumania. Licence. January 13.

MINISTRY OF HEALTH

Official Certificate of Search, Schedule. New Towns Act, 1946. Part VII of Local Land Charges Register relating to Compulsory Purchase Orders and Designation Orders. Form L.L.C. 1 (C).

Rates and Rateable Values in England and Wales, 1945–46.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

COURT PAPERS

SUPREME COURT OF JUDICATURE

HILARY SITTINGS, 1947

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION

Date.	ROTA OF REGISTRARS IN ATTENDANCE ON EMERGENCY ROTA	APPEAL COURT I	Mr. Justice VAISEY
Mon., Jan. 27	Mr. Reader	Mr. Andrews	Mr. Jones
Tues., ,, 28	Hay	Jones	Reader
Wed., ,, 29	Farr	Reader	Hay
Thurs., ,, 30	Blaker	Hay	Farr
Fri., ,, 31	Andrews	Farr	Blaker
Sat., Feb. 1	Jones	Blaker	Andrews

Date.	GROUP A		GROUP B	
	Mr. Justice ROXBURGH *Non-Witness.*	Mr. Justice WYNN-PARRY *Witness.*	Mr. Justice EVERSHED *Witness.*	Mr. Justice ROMER *Non-Witness*
Mon., Jan. 27	Mr. Blaker	Mr. Farr	Mr. Reader	Mr. Hay
Tues., ,, 28	Andrews	Blaker	Hay	Farr
Wed., ,, 29	Jones	Andrews	Farr	Blaker
Thurs., ,, 30	Reader	Jones	Blaker	Andrews
Fri., ,, 31	Hay	Reader	Andrews	Jones
Sat., Feb. 1	Farr	Hay	Jones	Reader